

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARYL DOUGLAS JUSTICE,

Defendant-Appellant.

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UNPUBLISHED

April 18, 2006

No. 260141

Alcona Circuit Court

LC No. 02-011054-FC

Before: Murphy, P.J., and O'Connell and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his sentences of 18 years, 9 months to 40 years and 8 to 15 years imposed on his convictions of criminal sexual conduct in the first degree (CSC I), the victim being under 13 years of age, MCL 750.520b(1)(a), and criminal sexual conduct in the second degree (CSC II), the victim being under 13 years of age, MCL 750.520c(1)(a), respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A jury convicted defendant of one count of CSC I and one count of CSC II. The trial court sentenced defendant to concurrent terms of 20 to 40 years for CSC I and 8 to 15 years for CSC II. In *People v Justice*, unpublished opinion per curiam of the Court of Appeals, issued October 26, 2004 (Docket No. 249429), we affirmed defendant's convictions but remanded for resentencing or rearticulation of the trial court's reasons for exceeding the guidelines.

On remand, the statutory sentencing guidelines recommended a minimum term range of 135 to 225 months for defendant's conviction of CSC I. Defendant argued that the trial court scored several Offense Variables (OVs) based on facts not found by the jury beyond a reasonable doubt, contrary to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). The trial court did not address this argument, and it sentenced defendant as indicated above and within the guidelines.

We review constitutional questions de novo. *People v Dunbar*, 463 Mich 606, 615; 625 NW2d 1 (2001).

Defendant argues that he is entitled to resentencing because the trial court scored various OVs based on facts that were not found beyond a reasonable doubt by the jury as required by *Apprendi v New Jersey*, 530 US 466; 120 S Ct 2348; 147 L Ed 2d 435 (2000), and *Blakely*,

*supra*. We disagree and affirm defendant's sentences. Our Supreme Court has stated that *Blakely* does not apply to Michigan's system of indeterminate sentencing because under our system, the maximum term is not set by the sentencing court, but rather is determined by statute, MCL 769.8. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). We are bound by the ruling in *Claypool*. *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004).<sup>1</sup>

Defendant does not support his assertion that various OVs were incorrectly scored. Thus, this issue has been abandoned. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004).

Affirmed.

/s/ William B. Murphy  
/s/ Peter D. O'Connell  
/s/ Christopher M. Murray

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<sup>1</sup> Our Supreme Court granted leave in *Drohan* to consider whether *Blakely* and *United States v Booker*, 543 US 220; 125 S Ct 738; 160 L Ed 2d 621 (2005), in which the Supreme Court held that *Blakely* and *Apprendi* apply to the federal sentencing guidelines, apply to Michigan's sentencing scheme. 472 Mich 881 (2005). That appeal is still pending, and *Claypool* continues to control.